BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SANDRA K. GIRARD	)	
Claimant	)	
VS.	)	
	)	Docket No. 236,997
PRESBYTERIAN MANORS, INC.	)	
Respondent	)	
Self-Insured	)	

ORDER

Respondent appeals Administrative Law Judge Bryce D. Benedict's July 3, 2000, Award.

APPEARANCES

Roger D. Fincher of Topeka, Kansas, appeared on behalf of claimant. Kathleen N. Wohlgemuth of Wichita, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found claimant's repetitive work activities while employed as a nurse's aide for respondent aggravated a preexisting bilateral carpal tunnel syndrome condition. The ALJ found claimant did not provide respondent with notice of the work-related accident within ten days. But the ALJ went on to find that the notice statute was satisfied because respondent had actual knowledge of the work-related accident.

On appeal, respondent contends the claimant failed to prove respondent had actual knowledge of the work-related accident. Thus, respondent argues claimant's claim for workers compensation benefits is not maintainable and should be denied.

Conversely, claimant contends the Award should be affirmed. Claimant argues that not only did her supervisor have actual knowledge of claimant's work-related accident but

also claimant gave timely notice of her work-related accident to her supervisor and respondent's human resource director before claimant terminated her employment with respondent on June 29, 1998.

The two issues for Appeals Board review are:

(1) Did respondent have "actual knowledge" of claimant's work-related accident rendering the giving of notice unnecessary?

(2) Did claimant provide respondent with notice of the work-related accident within ten days thereof?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs and the parties' arguments, the Appeals Board finds the ALJ's Award should be reversed and claimant is denied workers compensation benefits because respondent did not have actual knowledge of the accident and claimant failed to give respondent the required notice.

Claimant was employed by the respondent as a nurse's aide from 1988 until her last day worked of June 29, 1998. The ALJ found claimant's repetitive work activities had resulted in claimant suffering bilateral carpal tunnel syndrome injuries resulting in a 12 percent permanent partial general disability award. The ALJ also found respondent had "actual notice" through claimant's supervisor, Sherry Wiese, that claimant's repetitive work activities aggravated claimant's preexisting bilateral carpal tunnel syndrome condition resulting in additional permanent injury and functional impairment.

The current notice statute requires claimant to provide respondent with notice of a work-related accident within ten days thereof. The time for providing this notice may be extended up to 75 days for "just cause." But the employer's or the employer's authorized agent's "actual knowledge" of the accident renders the giving of such notice unnecessary.[1]

The ALJ found claimant's repetitive work activities had aggravated a preexisting bilateral carpal tunnel syndrome condition through claimant's last day worked of June 29, 1998. The ALJ found that claimant had failed to provide respondent with notice of a work-related accident within the required ten days. But the ALJ went on to conclude that claimant proved respondent had actual knowledge of the accident through claimant's supervisor, Ms. Wiese. In support of this conclusion, the ALJ found Ms. Wiese knew claimant's work activities were repetitive and claimant had a history of bilateral carpal tunnel syndrome. Additionally, claimant's supervisor knew claimant had sought medical treatment on January 20, 1998, because of pain in her arm. Also, claimant's supervisor

[1] *See* K.S.A. 44-520.

knew that claimant had again sought medical treatment on May 19, 1998, from her personal chiropractor who diagnosed claimant with tennis elbow and prescribed a supportive strap for claimant to wear around her arm while working.

The record in this case contains conflicting testimony between claimant, Ms. Wiese (claimant's supervisor), and Ms. Janice Johnson (respondent's human resources director). The basic conflict is that claimant testified she notified both Ms. Wiese and Ms. Johnson that her repetitive work activities were causing pain and discomfort in her upper extremities. But both Ms. Wiese and Ms. Johnson testified by deposition and both unequivocally denied that claimant told either of them that her work activities were causing her pain and discomfort in her upper extremities. Both Ms. Wiese and Ms. Johnson also testified that the first time either of them knew that claimant was claiming a work-related injury was sometime in September 1998 when the respondent received a demand letter from claimant's attorney.

In 1995, claimant was diagnosed with bilateral carpal tunnel syndrome. Claimant sought medical treatment on her own and did not request medical treatment through the respondent. On March 17, 1995, claimant underwent a right carpal tunnel release performed by orthopedic surgeon Marcellus A. Goff, M.D. Dr. Goff treated claimant's left carpal tunnel syndrome condition with a cortisone injection. On April 9, 1995, Dr. Goff released claimant to return to light work for two weeks and then to her regular duties. After claimant returned to her regular duties, claimant testified she was doing well for about a two-year period and then she again started having pain and discomfort in her upper extremities. Claimant did not claim that her 1995 bilateral carpal tunnel syndrome condition was related to her work activities. She testified she did not notify the respondent of a work-related accident and did not request respondent to provide medical treatment for her condition. Claimant had her health insurance provider pay for the medical treatment and also she received short-term disability payments from a private disability policy through the respondent. A copy of claimant's application for short-term disability was admitted into the record and signed by the claimant that indicated no workers compensation claim was filed for claimant's bilateral carpal tunnel syndrome condition.

Claimant testified the reason she did not file a workers compensation claim in 1995 was because her friend, JoAnn Palmer, who at that time was Director of Nursing, told her that filing of a workers compensation claim would increase the rent the nursing home residents had to pay.

At the regular hearing, claimant was asked if she knew anything about how to report a work accident or how to file a workers compensation claim. Claimant replied "No." But at a later point in her regular hearing testimony, claimant then admitted she did know she was required to report a work-related accident to the respondent immediately. Claimant acknowledged this was a requirement that was noted in the Employee Handbook. Also, claimant admitted that in 1996 she had reported a work-related accident and injury to her stomach muscles. For that injury, respondent had provided claimant with medical treatment

through respondent's doctor. Claimant contends that she notified Ms. Wiese and Ms. Johnson that her work was causing pain and discomfort, but claimant admits she did not request respondent to provide her with medical treatment and she went on her own to her personal chiropractor. This is inconsistent given claimant's previous authorized treatment for claimant's 1996 work injury. Additionally, at the time claimant terminated her employment with respondent, she completed an Exit Interview Form that was admitted into evidence. That form asked the claimant the reason for her resignation and she wrote "Time to move onto something different." Under the "Further comments" section of the form, claimant wrote that "this is a deadend job as far as wages go." There is no place on the Exit Interview Form that claimant wrote she was terminating her employment with respondent because of a work-related injury.

On January 20, 1998, and on May 18, 1998, claimant called the respondent and notified respondent that she had to go to the doctor. On January 21, 1998, claimant returned to work with a billing statement from her chiropractor that she had gone to the chiropractor and received a treatment on January 20, 1998. The statement showed that claimant paid the chiropractor by check for the treatment. On May 18, 1998, claimant's husband called the respondent and told the respondent that claimant was dizzy and he had to take claimant to the doctor. Claimant returned to work the next day with a statement from the chiropractor that claimant was also treated for tennis elbow. After May 18, 1998, claimant on occasion worked with a blue elbow support strap prescribed by the chiropractor.

Both Ms. Wiese and Ms. Johnson were questioned as to whether they knew claimant was working with a blue support strap and whether they knew that the chiropractor had diagnosed claimant with tennis elbow. Both knew that claimant had returned to work and had worked with the support strap. But again, neither one of them had been told by the claimant that the repetitive work was aggravating or irritating her arms. Ms. Wiese knew about the tennis elbow diagnosis, but Ms. Johnson did not. This does not constitute actual knowledge of a work-related accident.

The Appeals Board concludes respondent cannot be found to have actual knowledge of a work-related accident. Claimant contends she somehow discussed or otherwise told Ms. Wiese or Ms. Johnson, or both, her work activities were causing pain and discomfort in claimant's upper extremities. If believed, this would constitute notice. But the fact claimant had a history of carpal tunnel syndrome that she failed to report as work related, that she went to her personal chiropractor on two occasions in 1998, then at one time was diagnosed by the chiropractor with tennis elbow and wore a strap, suggests claimant did not give notice and fails to establish that respondent either had actual knowledge or should have had actual knowledge that claimant's work was causing her problems with her upper extremities.

In regard to claimant's contention that she proved she provided timely notice to respondent through Ms. Wiese and Ms. Johnson, the Appeals Board also finds claimant

did not sustain her burden of proof. Claimant's testimony in this regard is completely contradicted by testimony of both Ms. Wiese and Ms. Johnson and the employment records entered into evidence. It is difficult for the Appeals Board to believe that claimant knew that her work activities were causing her discomfort in her arms and upper extremities but did not request for the respondent to provide her with medical treatment. Additionally, if her work activities did aggravate and cause her pain and discomfort in her upper extremities, claimant does not adequately explain why she did not state that as a reason for her terminating her employment with respondent.

Therefore, the Appeals Board concludes claimant failed to prove that she provided respondent with timely notice of a work-related accident or respondent had actual knowledge of the accident making timely notice unnecessary.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's July 3, 2000, Award should be, and the same is hereby, reversed and claimant is denied workers compensation benefits.

The court reporter fees and costs assessed against the respondent, a qualified self-insured, as listed in the Award are adopted by the Appeals Board and made a part of this Order.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Kathleen N. Wohlgemuth, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director